

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUIDEONE MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

GRACIA ABUNDANTE,

Defendants.

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Civil Action No. _____

ELECTRONICALLY FILED

PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff GuideOne Mutual Insurance Company files this Complaint for Declaratory Judgment and states:

PARTIES

1. Plaintiff GuideOne is an insurance company. GuideOne is an Iowa corporation with its principal place of business in West Des Moines, Iowa. GuideOne is authorized to do business in Texas.

2. Defendant Gracia Abundante is a church located in Conroe, Texas. Gracia Abundante is a citizen of Texas and organized pursuant to the laws of Texas. Gracia Abundante's place of business is located at 1001 Wilson Road, Conroe, Texas 77301. Gracia Abundante may be served at this address.

JURISDICTION

3. This Court has subject matter jurisdiction under 28 U.S.C. §1332(a) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. This action is brought for the purpose of determining a real, substantial, and justiciable controversy between the parties concerning the rights and responsibilities of the parties with respect to certain contracts of insurance.

VENUE

5. Under 28 U.S.C. §1391, venue is proper in the United States District Court for the Southern District of Texas, Houston Division, because the contact between the parties was delivered, the policyholder resides, and the losses complained of for which recovery is sought from the insurance policy in question all took place within this district.

POLICY OF INSURANCE

6. GuideOne issued a commercial policy of insurance to Gracia Abundante, policy number 1415-471 (“the Policy”). A true and accurate certified copy of the declaration pages, endorsements, and policy forms for the Policy is attached hereto as Exhibit 1.

7. The effective dates of the Policy were June 1, 2014 to June 1, 2015.

8. The Policy was intended to provide coverage according to its agreed terms with respect to coverage and exclusions for property damage.

9. The relevant language in the Policy states:

A. COVERAGE (FORM PCP 23 14 04 09)

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

B. EXCLUSIONS (FORM PCP 43 14 04 09)

2. We will not pay for any loss or damage caused by or resulting from any of the following:

- d. (1) Wear and tear;
(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a** through **3.c**. But if an excluded cause of loss that is listed in **3.a** through **3.c** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph **1.** above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance:of part or all of any property on or off the described premises.

C. LIMITATIONS

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

THE MAY 12, 2015 LOSS

10. Upon information and belief, the Gracia Abundante church property (operating under a different church name at the time) sustained a significant loss on September 13, 2008 as a result of Hurricane Ike. This loss led to litigation and the eventual recovery of hundreds of thousands of dollars of money for the repair of the property.

11. Subsequently, on May 12, 2015, a tree fell onto the roof of the gym structure at the subject property.

12. Gracia Abundante submitted a claim to GuideOne for the loss that occurred on May 12, 2015.

13. EFI Global, Inc. (an engineering company) inspected the loss on June 5, 2015 and determined:

- there was no evidence of recent wind damage to the roof of the sanctuary;
- there was interior distress to the ceiling of the sanctuary that pre-dated the May 2015 incident and was the result of past water intrusion;
- the majority of the water intrusion in the gym was related to long term, ongoing age- and maintenance-related issues with the aged roof of the building, and was not a result of the storm on the May 12, 2015 date of loss; and
- there was damage to the East slope of the building from impact by a fallen tree.

A true and accurate copy of EFI Global's report is attached as Exhibit 2.

14. On June 17, 2015, US Adjusting Service prepared a restoration/service/remodel estimate for the property at GuideOne's request. The estimate for repairs related to the tree

falling on the roof totaled \$4,784.73, an amount less than Gracia Abundante's deductible of \$5,000. A true and accurate copy of US Adjusting Service's estimate is attached as Exhibit 3.

15. By contrast, Gracia Abundante's estimate for repairs to the property is at least \$211,654.25. A true and accurate copy of Suncoast Claims' estimate, prepared at the request of Gracia Abundante, is attached as Exhibit 4.

16. On July 28, 2015, GuideOne sent a letter to Gracia Abundante stating that not all of the claimed damages were covered under the Policy, as the Policy excludes wear and tear. A true and accurate copy of the letter is attached as Exhibit 5.

17. On September 24, 2015, counsel for Gracia Abundante demanded \$281,501.25 to settle the church's claim via letter sent to GuideOne. A true and accurate copy of this letter is attached as Exhibit 6.

18. GuideOne invoked the appraisal clause of the Policy, but counsel for Gracia Abundante argued that appraisal was inappropriate because the parties disagree on coverage. A true and accurate copy of the letter sent by counsel for Gracia Abundante is attached as Exhibit 7.

COUNT I—DECLARATORY JUDGMENT OF NO COVERAGE

19. GuideOne hereby realleges and incorporates all previous paragraphs of this Complaint for Declaratory Judgment as though fully set forth herein.

20. The majority of Gracia Abundante's claimed loss pertains to pre-existing damage to the roof structure, wear and tear, and maintenance issues leading to corresponding interior property damage.

21. The Policy does not provide coverage to Gracia Abundante for wear and tear, continuous leakage of water occurring over a period of 14 days or more, weather conditions, or faulty or inadequate maintenance.

22. Based on these exclusions, and other exclusions set forth in the Policy, GuideOne is entitled to a judgment declaring that there is no coverage under the Policy for these claims of Gracia Abundante because they are barred by the Policy exclusions cited above.

23. An actual controversy exists between the parties hereto, and GuideOne has no other adequate remedy at law.

WHEREFORE, relying upon the facts outlined above, GuideOne respectfully requests that the Court adjudge:

- (a) That process issue as required by law and that Defendant Gracia Abundante be served with a copy of this Complaint for Declaratory Judgment;
- (b) That this Court declare there is no coverage under the Policy for the claims of Gracia Abundante related to wear and tear, continuous leakage of water occurring over a period of 14 days or more, weather conditions, faulty or inadequate maintenance, or any other condition(s) excluded under the Policy;
and
- (c) That GuideOne have such other and further relief that this Court sees just and proper.

Signed this 26th day of October, 2015.

Respectfully submitted,

By: /s/Susan E. Egeland

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